

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1215 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DILIP JAMNADAS DANGI

Versus

PATEL ABBASBHAI HANSANALI

Appearance:

MR HARESH H PATEL for Petitioner

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 04/11/96

ORAL JUDGEMENT

Leave to amend. The petitioner is permitted to join Mrs. Kherunben Abbasbhai Patel as respondent no.2. Ld. Advocate Mr.S.M.Shah appears for respondent no.2 and waives service of notice.

Rule. Ld. Advocate Mr. S.M.Shah appearing for the respondents waives service of notice of Rule and with

consent of the concerned advocates, this application is heard today.

The petitioner has approached this Court with a grievance that by an order passed below application exh.111 in Regular Civil Suit No. 77/91 by the Ld.Civil Judge (J.D.), Wankaner, dated 15.7.1996 right of the petitioner-original defendant to lead evidence had been adversely affected.

Ld. Advocate Shri Nilesh Pandya has vehemently argued that even if there was some fault on the part of the lawyer representing the petitioner before the trial court, the petitioner tenant should not be penalised for fault of his lawyer and therefore he has submitted that the impugned order dated 15.7.1996 be quashed and set aside and right of the petitioner-tenant to lead evidence be reopened.

It is clear from the impugned order that the Ld. Advocate appearing for the petitioner had remained absent on several occasions and therefore the Court was constrained to pass the impugned order.

Ld. Advocate Mr. M.S.Shah appearing for the respondents has vehemently submitted that the petitioner tenant is trying his best to see that the litigation is prolonged as he is in actual possession of the suit premises. Mr. Shah has further submitted that the petitioner is aware of the fact that he is likely to loose in the suit and, therefore, he is making all possible efforts to delay the proceedings.

Looking to the peculiar facts and circumstances of the case, the impugned order is quashed and set aside so as to see that the right of the petitioner-tenant is not adversely affected. It is, however, directed that the trial court shall decide the suit as soon as possible and preferably before 30.1.1997. Ld.Advocate Mr. Pandya has assured this Court that the petitioner will not try to delay the proceedings and will extend his co-operation to the trial court for completing the proceedings before the above-referred date.

Ld. Advocate Mr. Shah has further submitted that on account of delaying tactics adopted by the petitioner, his client has been put to unnecessary expenditure and so as to compensate him, some special costs should be awarded. Looking to the facts of the

case, I also feel that it would be in the interest of justice to award costs so as to have some deterrent effect on the petitioner-tenant.

Under the circumstances, Civil Revision Application is allowed. The impugned order dated 15.7.1996 passed below application exh.111 in Reg. Civil Suit No. 77/91 passed by the Ld.Civil Judge (J.D.) Wankaner is hereby quashed and set aside. It is also directed that the right of the petitioner to lead his evidence be reopened. Rs. 1500/ (Rs. One thousand five hundred only) is awarded by way of costs. The said amount shall be deposited by the petitioner-tenant in the trial court on or before 1.12.1996. On amount being deposited in the trial Court, the respondent landlord would be permitted to withdraw the same. Trial Court is directed to hear and dispose of Reg.Civil Suit No. 77/91 as soon as possible and preferably before 30.1.1997. Rule is made absolute to the aforesaid extent.

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